UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

WYMAN GORDON PENNSYLVANIA, LLC	:	
	:	
AND	:	CASES 04-CA-182126, 04-CA-186281, and 04-CA-188990
UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED-INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO/CLC	:	

RESPONDENT'S MOTION FOR A BILL OF PARTICULARS OR, IN THE ALTERNATIVE, TO STRIKE AND DISMISS THE ALLEGATIONS RELATING TO THE WITHDRAWAL CHARGE

I. INTRODUCTION

Pursuant to Section 102.24 of the National Labor Relations Board's ("NLRB" or the "Board") Rules and Regulations, Respondent, Wyman Gordon Pennsylvania, LLC ("Wyman Gordon" or "Respondent"), by and through its undersigned counsel, hereby moves for an order requiring the Regional Director of Region 4 to specify with particularity in the Complaint[1] the factual basis upon which he relies in alleging that Wyman Gordon's withdrawal of recognition of the Union as the exclusive collective-bargaining representative of the Unit is a violation of Sections 8(a)(1) and (5) of the National Labor Relations Act (the "Act"). The Complaint contains only three cursory allegations regarding the withdrawal of recognition. The Complaint alleges only: (1) Respondent engaged in the conduct previously described in the Complaint and without having remedied such conduct; (2) Respondent withdrew recognition of the Union on

[1] A copy of the Consolidated Complaint signed by the Regional Director on Sept. 29, 2017 (the "Complaint") is attached hereto as Exhibit A.

November 29, 2016 without an election conducted by the Board; and (3) a legal conclusion that Respondent therefore failed and refused to bargain collectively with the Union. The Regional Director's conclusory and disjoined allegations provide insufficient notice to Wyman Gordon of the factual and legal bases for the allegation that the withdrawal of recognition of the Union was in violation of the Act, depriving Wyman Gordon of its fundamental right to due process. In order for Wyman Gordon to have a full and fair opportunity to prepare for its defense at trial, the Regional Director must first specify with particularity the underlying factual and legal bases as to the allegation that Wyman Gordon's withdrawal of recognition of the Union was in violation of the Act.

If the Regional Director does not describe with particularity the basis or bases for the allegation that Wyman Gordon's withdrawal of recognition of the Union was a violation of the Act (*see* Complaint ¶¶ 14, 16), then Wyman Gordon moves that such allegations be stricken.

II. LEGAL ANALYSIS

A. Legal Standard of Particularity Required in a Complaint

The Board's Rules and Regulations, the Board's Casehandling Manual, and Administrative Procedure Act demand that the Complaint notify a respondent of the facts and law at issue so the respondent has a full and fair opportunity to prepare a defense. *See* NLRB Rules and Regulations, Rule 102.15 ("The complaint shall contain . . . a clear and concise description of the acts which are claimed to constitute unfair labor practices, including, where known, the approximate dates and places of such acts and the names of respondent's agents or other representatives by whom committed"); NLRB Casehandling Manual § 10268.1 (The Complaint "sets forth . . . the facts relating to the alleged violations by the respondent(s)"); NLRB Casehandling Manual § 10264.2 (requiring that the complaint be "sufficiently detailed to enable the parties to *understand* * * * *the*

issues to be met."); Administrative Procedure Act, 5 U.S.C. § 554(b)(3) ("Persons entitled to notice of an agency hearing shall be timely informed of . . . the matters of ***fact and law*** asserted"). Ultimately, the issue is whether additional information is needed for "adequate preparation" for trial. *Westinghouse Electric Corp.*, 224 NLRB 899, 900 (1976); *see also Walsh-Lumpkin Wholesale Drug Co.*, 129 NLRB 294, 295 (1960) (Respondent is entitled to be informed of "the nature of the violations charged, the manner by which Respondent engaged in unfair labor practices, and the approximate times and places at which such acts had been committed."). As currently presented, the Regional Director has provided scant information to, Wyman Gordon as to the basis for his allegation that Respondent illegally withdrew recognition of the Union as the exclusive collective-bargaining representative for the Unit.

B. Legal Standard for Withdrawal of Recognition

An employer may, without petition for an election, unilaterally withdraw recognition where it can prove that the union has actually lost the support of the majority of the bargaining unit employees. In fact, an employer is ***required*** to withdraw recognition of the union where, as here, it has received evidence that the majority of the bargaining unit employees no longer wanted to be represented by the union. *See Dura Art Stone, Inc.*, 346 NLRB 149 (2005) (An Administrative Law Judge, in a decision ultimately ratified by the NLRB, found that both the company and union committed an unfair labor practice by continuing to negotiate and ultimately entering into a collective bargaining agreement when both parties were aware that a majority of bargaining unit employees no longer wished to be represented by the union.); *United Electrical, Radio and Machine Workers of America, Local 1421*, 346 NLRB 149 (2005) (same). *See also* Wyman

Gordon's Answer to Complaint and Affirmative Defenses[2] ¶ 14(b), (c) (admitting that Wyman Gordon withdrew recognition of the Union as the exclusive collective-bargaining representative of the Unit per the request of the attorneys at the National Right to Work Foundation who provided the petition sheets signed by a majority of Unit employees demonstrating that the Union no longer had majority support among the employees). Only in the context of serious un-remedied unfair labor practices tending to cause employees to become disaffected with the union may an employer not withdraw recognition of the union when it receives evidence that the majority of bargaining unit employees no longer want to be represented by the union. *See Williams Enterprises*, 312 NLRB 939, 940 (1993). More specifically, "In cases involving unfair labor practices other than a general refusal to bargain,[3] the Board has identified several factors as relevant to determining whether a causal relationship exists between unremedied unfair labor practices and the subsequent expression of employee disaffection with an incumbent union. These factors include: (1) The length of time between the unfair labor practices and the withdrawal of recognition; (2) the nature

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[2] A true and correct copy of Wyman Gordon's Answer to the Complaint and Affirmative Defenses, electronically filed with the Region on October 12, 2017 ("Answer to Complaint"), is attached hereto as Exhibit B.

[3] It is undisputed that this case does not involve a general refusal to bargain. Indeed, this case does not even involve an allegation that Wyman Gordon failed to bargain in overall good faith. *See generally* Regional Director's Decision to Partially Dismiss Case 04-CA-188990 (Mar. 1, 2017) ("I have decided to dismiss the portions of the charge alleging that the Employer violated Section 8(a)(1) and (5) of the Act by making unilateral changes to the employee health care premiums in June 2016, paying Quarterly Cash Bonuses to employees on August 15 and October 26 without bargaining over discretionary components of the bonuses, and failing to bargain in overall good faith with [the Union]. I am also dismissing the portion of the charge alleging the charge alleging that the Employer violated Section 8(a)(1) and (3) of the Act by singling out two employees for discipline in retaliation for their Union activities."), a true and correct copy of which is attached hereto as Exhibit C. *See also* Office of Appeals Decision to Affirm the Regional Director's decision (June 29, 2017) ("[W]e do not find that the Employer engaged in bad faith bargaining).

of the illegal acts, including the possibility of their detrimental or lasting effect on employees; (3) any possible tendency to cause employee disaffection from the union; and (4) the effect of the unlawful conduct on employee morale, organizational activities, and membership in the union." *Williams Enterprises, Inc.*, 312 NLRB 937, 939 (1993). The Complaint is entirely devoid of factual allegations demonstrating a causal relationship between the alleged unfair labor practices,[4] and the subsequent petition by the majority of bargaining unit employees to withdraw recognition of the Union as the collective-bargaining representative of the Unit.

C. The Complaint Contains Insufficient Allegations In Support of its Conclusion that Wyman Gordon Withdrew Recognition of the Union in Violation of the Act

The Regional Director and the Union are well aware that Wyman Gordon withdrew recognition of the Union only upon request and receiving evidence that the Union actually lost the support of the majority of the bargaining unit employees. Therefore, in order to demonstrate that Wyman Gordon improperly withdrew recognition of the Union as the exclusive collective-bargaining representative for the Unit in violation of the Act, the Regional Director must demonstrate that (1) there were serious unremedied unfair labor practices that (2) caused employees to become disaffected with the Union. As set forth above, there are four factors to determine whether there is a causal relationship exists between the alleged unfair labor practices and employee disaffection, and the Complaint contains ***no*** factual allegations in support of a causal connection between the alleged unfair labor practices and employee disaffection. Notably, in pleading the "nature" of the illegal acts – as required by the Board's Rules and Regulations, the Board's Casehandling Manual, and the Administrative Procedure Act – the possibility of their

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[4] Notably, the Complaint also demonstrates that several of the alleged unfair labor practices were, in fact, remedied prior to November 29, 2016. *See, e.g.*, Answer to Complaint ¶¶ 8, 10(b), 11(c)-(e), 12(d).

detrimental or lasting effect on employees must also be pled. *See Williams Enterprises*, 312 NLRB at 939 (explaining that the nature of the illegal acts *includes* the possibility of their detrimental or lasting effect on employees). There are no factual allegations that the alleged unfair labor practices had ***any*** detrimental effect on employees, let alone a lasting effect. There are no factual allegations that the alleged unfair labor practices would have any tendency to cause employee disaffection from the union. There are no factual allegations regarding the effect of the unlawful conduct on employee morale. In order to adequately prepare for the hearing, Wyman Gordon is entitled to factual allegations relating to who was aware of the alleged unfair labor practices, how the Union believes the alleged unlawful practices tended to cause employee dissatisfaction, and how and who was effected by the alleged unlawful conduct.

The ***only*** allegation that purports to address the causal connection issue is an unsubstantiated legal conclusion. The Complaint contains nothing more than a conclusory allegation that paragraphs 6 through 13 are somehow related to the withdrawal of recognition, and that the conduct alleged in paragraphs 6 through 13 were unremedied. This is demonstrably not true and, again, this conclusory allegation (Complaint ¶ 14(b)) provides insufficient factual information connecting these alleged unfair practices to the employee disaffection that would permit Wyman Gordon to understand the issues to be met and adequately prepare for trial. By way of example, Paragraphs 6 and 10, could not have an impact on the withdrawal of recognition because no unfair labor practice relating to this practice was filed until ***after*** Wyman Gordon withdrew recognition of the Union and there are no factual allegations that the policies or bargaining issues referenced therein did or have any potential to cause the employees to become disaffected with the Union. Likewise, there is and can be no factual support for the conclusion that, employees became disaffected with the Union because a few bargaining sessions may have

started late and, therefore, Wyman Gordon should not have withdrawn recognition of the Union. *See* Complaint ¶ 7. Contrary to the Complaint's allegation in Paragraph 14(b), the allegations in Paragraphs 8, 11, 9, and 12 actually were remedied and rendered moot well in advance of the withdrawal of recognition and, again, there are no factual allegations relating to how these paragraphs are related to or had a causal connection with employee disaffection with the Union. *E.g.*, Answer to Complaint ¶ 8 (explaining that Wyman Gordon in good faith attempted to bargain with the Union over the discretionary amount of the annual wage increases for Unit employees, and it was the Union who failed to respond to Wyman Gordon's proposals); ¶ 11(d) ("[A]s the Complaint acknowledges, the information identified in Paragraph 11(a)(i) of the Complaint was provided to the Union."); ¶ 12(d) ("Wyman Gordon provided the appropriate health insurance related information to the Union"). As to Paragraphs 12 and 13, there again are no factual allegations as to the causal connection between these information requests. Moreover, the Regional Director has since determined that Wyman Gordon did not violate the Act by making changes to the employee health care premiums in June 2016 (*see* n.1, *supra*), essentially rendering Paragraph 12 irrelevant, and the Regional Director originally determined that Wyman Gordon was not obligated to provide to the Union the information requested in Paragraph 13.[5]

The complete failure to provide the factual and legal bases of a critical element of one of the Regional Director's claims deprives Wyman Gordon of the notice to which it is entitled, and prevents it from meaningfully preparing its defenses for trial. Accordingly, the Regional Director

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[5] Although the Office of Appeals, with no explanation, sustained the Union's appeal of the Regional Director's dismissal, the Complaint still has not properly alleged a factual connection between the Union's unexplained request for sweeping financial and the employees' disaffection with the Union that resulted in a petition signed by a majority of Unit employees demonstrating that the Union no longer had majority support among the employees.

must be ordered to furnish a bill of particulars as to the withdrawal of recognition allegation so that Wyman Gordon can properly investigate and prepare for trial.

III. CONCLUSION

The Region has inadequately described the Union's evidence in support of its conclusory allegation that Wyman Gordon's withdrawal of recognition of the Union as the exclusive collective-bargaining representative of the Unit is a violation of Sections 8(a)(1) and (5) of the Act, because the Complaint does not provide Wyman Gordon with meaningful notice of the improper withdrawal charge against it. Accordingly, Wyman Gordon cannot fairly prepare its own defense at trial. Thus, the Regional Director should be ordered to provide the particulars of the illegal withdrawal of recognition charge – including the causal connection between the alleged unfair labor practices and the employee disaffection. Alternatively, should the Regional Director fail or be unable to provide such particulars, then the allegations relating to Wyman Gordon's withdrawal of recognition of the Union should be stricken.

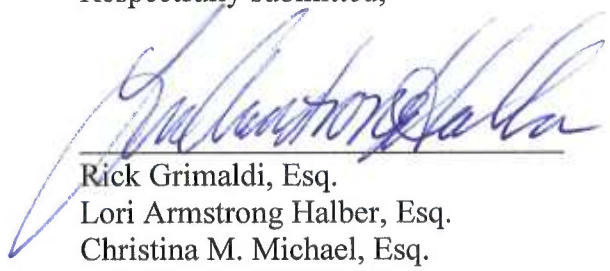
WHEREFORE, having demonstrated that Paragraphs 14 and 16 of the Complaint are insufficient under the Board's Rules and Regulations, the Board's Casehandling Manual, Fifth Amendment to the U.S. Constitution, and the Administrative Procedure Act by failing to specify the factual basis for the allegation that Wyman Gordon's withdrawal of recognition of the Union was in violation of the Act, Wyman Gordon requests that:

(a) the Regional Director be ordered to promptly provide the specifics and particulars of the allegation that Wyman Gordon's withdrawal of recognition of the Union was in violation of the Act contained in Paragraphs 14 and 16 of the Complaint; and

(b) upon the Regional Director's failure or inability to provide such specific and particular information to support the allegations in Paragraphs 14 and 16 of the Complaint, those allegations should be stricken.

Respectfully submitted this 13th day of October, 2017.

Respectfully submitted,



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ATTORNEYS FOR RESPONDENT WYMAN GORDON PENNSYLVANIA, LLC

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

WYMAN GORDON PENNSYLVANIA, LLC	:	
	:	
v.	:	CASES 04-CA-182126, 04-CA-186281, and 04-CA-188990
UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED-INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO/CLC	:	

CERTIFICATE OF SERVICE

Pursuant to Section 102.24 and 102.114 of the *Board's Rules and Regulations*, I hereby certify that on the 13th day of October, 2017, I e-filed *Respondent's Motion for a Bill of Particulars or, in the Alternative, to Strike and Dismiss the Allegations Relating to the Withdrawal Charge* with the Panel of Judges, and served a copy of the foregoing document via e-mail and U.S. Mail to all parties in interest, as listed below:

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EXHIBIT A

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

WYMAN GORDON PENNSYLVANIA, LLC

and

Cases 04-CA-182126,
04- CA-186281 and
04-CA-188990

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED-INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO/CLC

ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, AFL-CIO/CLC, (the Union), has charged that Wyman Gordon Pennsylvania, LLC, (Respondent), has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Section 151 *et seq.*, herein called the Act. Based thereon, and in order to avoid unnecessary costs or delay, the General Counsel, by the undersigned, pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, **ORDERS** that these cases are consolidated.

These cases having been consolidated, the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, issues this Order Consolidating Cases, Consolidated Complaint and Notice of Hearing and alleges as follows:

1. (a) The charge in Case 04-CA-182126 was filed by the Union on August 15, 2016, and a copy was served on Respondent by U.S. mail on August 15, 2016.

(b) The charge in Case 04-CA-186281 was filed by the Union on October 17, 2016, and a copy was served on Respondent by U.S. mail on October 17, 2016.

(c) The charge in Case 04-CA-188990 was filed by the Union on November 30, 2016, and a copy was served on Respondent by U.S. mail on December 1, 2016.

2. (a) At all material times, Respondent, an Oregon-based limited liability company and a subsidiary of Precision Castparts Corporation (PCC), has been engaged in the manufacture of forgings for gas turbines at its Plains, Pennsylvania facility (the Facility).

(b) During the past year, Respondent, in conducting its operations described above in subparagraph (a), sold and shipped goods valued in excess of $50,000 directly to points outside the Commonwealth of Pennsylvania.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

4. (a) At all material times, the following individuals held the positions with Respondent set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Timothy Brink	—	Area Manager
Matthew Troutman	—	General Manager
Brad Georgetti	—	Regional Human Resources Manager
Leah Leikheim	—	Human Resources Administrator
Elizabeth Griffiths	—	EH&S Manager.

(b) At all material times, Deborah Lukas has served as Respondent's Human Resources Assistant, and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

(c) At all material times, Respondent's counsel has served as Respondent's Chief Negotiator in collective bargaining with the Union, and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

5. (a) The following employees of Respondent at the Facility, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time production and maintenance employees employed by the Employer at its 1141 Highway 315, Plains, PA facility, excluding all other employees, office clerical employees, audit inspectors, guards, and supervisors (including group leaders) as defined in the Act.

(b) On April 14, 2015, the Union was certified as the exclusive collective-bargaining representative of the Unit.

(c) At all times since April 14, 2015, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

6. At all material times since about April 17, 2016, Respondent has maintained the following rules in its employee handbook:

(a) **CONFIDENTIALITY STATEMENT OF WYMAN-GORDON**

....

As an employee of Wyman-Gordon, you understand that all customer, supplier, and staff information is confidential and may not be disclosed to anyone, except where required for a business purpose. Also, copying, removing, allowing unauthorized access to any Company, customer or supplier documents, paper files, computer files or mailing lists, Company or customer proprietary information and processes or any form of distribution of customer, supplier or Company information is not allowed. Personal employee information, such as address, phone numbers, social security numbers, etc., is not to be discussed, copied, released or provided to any other employee within the Company.

All employees are required to acknowledge the Intellectual Property Agreement of Wyman-Gordon. Any employee who breaches the confidentiality requirement will be subject to discipline, up to and including termination. [Emphasis in original]

(b) **ELECTRONIC COMMUNICATIONS**

....

PCC strives to maintain a workplace free of harassment and sensitive to the diversity of its employees. Therefore, PCC prohibits the use of computers, telephones, cell phones, voice mail, the Internet, and the e-mail system in ways that are disruptive, offensive to others, harmful to morale or inconsistent with our policies. For example, the access, display or transmissions of sexually explicit or other offensive images, messages, and cartoons is strictly prohibited. Other such use includes, but is not limited to, ethnic slurs, racial comments, off-color jokes, or anything that may be construed as harassment or showing disrespect for others.

(c) **MEDIA CONTACT**

Wyman-Gordon Company has designated certain individuals for public communication; consequently, information is not to be given to the media. In the event that the media makes contact with a staff member, that staff member should request the name, telephone number, and the organization represented so that the appropriate staff member of Wyman-Gordon Company can return the contact. The media contact information is to be given to the General Manager of Wyman-Gordon Company immediately who will forward the information to the appropriate parties within the PCC Corporation in Portland, Oregon.

7. (a) At various times from about September 2015 through November 2016, Respondent and the Union met for the purposes of negotiating an initial collective-bargaining agreement with respect to wages, hours, and other terms and conditions of employment.

(b) On the following dates since May 30, 2016, Respondent failed and refused to meet at reasonable times with the Union to negotiate a collective-bargaining agreement by arriving late to scheduled bargaining sessions: July 12, 2016, August 12, 2016, August 26, 2016, September 1, 2016. September 12, 2016, September 22, 2016, October 11, 2016, October 26, 2016, October 27, 2016, November 5, 2016, November 10, 2016, and November 17, 2016.

8. At all material times prior to August 12, 2016, Respondent failed to either: (i) implement its established annual wage increases for Unit employees; or (ii) offer to bargain with the Union over the discretionary amount of the annual wage increases for Unit employees.

9. (a) From about October 14, 2016 until about October 21, 2016, Respondent prohibited employees who had been performing light duty work from continuing to perform light duty work.

(b) The subject set forth above in subparagraph (a) relates to wages, hours, and other terms and conditions of employment of the Unit and is a mandatory subject for the purposes of collective-bargaining.

(c) Respondent engaged in the conduct described above in subparagraph (a), without prior notice to the Union and without having afforded the Union an opportunity to bargain with Respondent concerning this conduct.

10. (a) By letter dated August 12, 2016, the Union requested that the parties engage in bargaining over economic issues, including the Union's interim wage proposal.

(b) Since about August 12, 2016, Respondent has failed and refused to bargain collectively about the subjects set forth in subparagraph (a).

(c) About August 26, 2016, the Union requested that Respondent provide its response to the Union's proposals concerning vacations, Rights and Assignments, Holidays, Safety & Health, and Timekeeping.

(d) Since about August 26, 2016, Respondent has failed and refused to bargain collectively about the subjects set forth above in subparagraph (c).

(e) By letter dated August 31, 2016, the Union requested that Respondent provide its position on all issues contained in the Union's initial bargaining proposal dated September 17, 2015 to which Respondent had not yet provided a response, including: Seniority, New Classifications/Rates, and the non-economic components of Vacation & Holidays.

(f) Since about August 31, 2016, Respondent has failed and refused to bargain collectively about the subjects set forth in subparagraph (e).

11. (a) About August 12, 2016, the Union, by letter to Respondent's attorney, requested that Respondent furnish the Union, inter alia, with the following information:

(i) For each employee working in the bargaining unit at the time, please provide the date and amount of any bonuses, monetary awards, lump sums, or other payments that are not made every payroll period between January 1, 2013 to the present.

(ii) Describe the mechanisms by which the payments in [i] were calculated and a description of the information relied upon in determining their amount.

(iii) Provide any written descriptions of the Company's practices with respect to pay rate, increases, bonuses, monetary awards, or other payments.

(b) About August 31, 2016, September 21, 2016, and October 17, 2016, the Union reiterated its request for the information referred to above in subparagraph (a).

(c) The information requested by the Union, as described above in subparagraph (a), is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(d) From about August 12, 2016 until November 1, 2016, Respondent unreasonably delayed in providing to the Union the information requested by it as referred to above in subparagraph (a)(i).

(e) Since about August 12, 2016, Respondent has failed and refused to furnish the Union with the information requested by it as described above in subparagraphs (a)(ii) and (iii).

12. (a) About August 31, 2016, the Union, by letter to Respondent's attorney, requested that Respondent furnish the Union, inter alia, with the following information:

(i) All health insurance plans, summary plan descriptions, and employee and employer premium contributions for plans applicable to unit employees in 2013, 2014, 2015, and 2016.

(ii) Copies of any written communications to bargaining unit employees announcing or explaining changes to health insurance plans, benefits, or contributions between January 1, 2013 to the present.

(b) About September 6, 2016, September 21, 2016 and October 17, 2016, the Union, by letters to Respondent's attorney, reiterated its request for the information referred to above in subparagraph (a).

(c) The information requested by the Union, as described above in subparagraph (a), is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(d) Since about August 31, 2016, Respondent has failed and refused to furnish the Union with the information requested by it as described above in subparagraph (a).

13. (a) About September 6, 2016, the Union, by letter to Respondent's attorney, requested that Respondent furnish the Union, inter alia, with the following information:

> (i) The current prices for the five items produced by the facility that realize the greatest revenue.
>
> (ii) All changes to the prices of the items listed in [i] between January 1, 2014, and the present.
>
> (iii) The labor cost at the facility as a percentage of the price of each of the items listed in [i] as of the current date and as of January 1 of 2016, 2015, and 2014.
>
> (iv) The identities of the Company's primary competitors for each of the items listed in [i] and the current prices of their most equivalent products.
>
> (v) Any analyses by the Company (or prepared on its behalf) regarding the impact of increasing labor costs on prices.
>
> (vi) Any analyses by the Company (or prepared on its behalf) regarding the impact of increasing prices on sales or profits.

(b) About September 21, 2016 and October 17, 2016, the Union, by letters to Respondent's attorney, reiterated its request for the information referred to above in subparagraph (a).

(c) About October 11, 12, 26, and 27, 2016, the Union, at bargaining sessions held at the Quality Inn in Wilkes-Barre, Pennsylvania, verbally reiterated to Respondent's attorney its request for the information referred to above in subparagraph (a).

(e) The information requested by the Union, as described above in subparagraph (a), is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(f) Since about September 12, 2016, Respondent has failed and refused to furnish the Union with the information requested by it as described above in subparagraph (a).

14. (a) About November 29, 2016, Respondent withdrew its recognition of the Union as the exclusive collective-bargaining representative of the Unit.

(b) Respondent engaged in the conduct described above in subparagraph (a) despite having engaged in the conduct described above in paragraphs 6 through 13 and without having remedied such conduct.

(c) Respondent engaged in the conduct described above in subparagraph (a), absent the results of an RM or RD election conducted by the Board.

15. By the conduct described above in paragraph 6, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

16. By the conduct described above in paragraphs 7, 8, 9, 10(b), 10(d), 10(f), 11(d), 11(e), 12(d), 13(f), and 14, Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

17. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above, the General Counsel seeks an Order requiring that Respondent bargain in good faith with the Union, upon request, as the recognized representative in the appropriate Unit, as required in *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962), for a reasonable period from the issuance of the Board's Order. The General Counsel further seeks an Order requiring Respondent to bargain with the Union, upon request, for a minimum of 24 hours per month until an agreement or lawful impasse is reached or until the parties agree to a respite in bargaining, and to prepare written bargaining progress reports every month and submit them to the Regional Director and also serve the reports on the Union to provide the Union with an opportunity to reply. The General Counsel additionally seeks an Order requiring Respondent to read the Notice to Employees to employees at a mandatory meeting or meetings scheduled to ensure the widest possible audience at the Facility during the employees' paid working time in the presence of a Board agent. The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an Answer to the Consolidated Complaint. The Answer must be **received by this office on or before October 13, 2017 or postmarked on or before October 12, 2017**. Unless filed electronically in a pdf format, Respondent should file an original and four copies of the Answer with this Regional Office.

An Answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an Answer electronically, access the Agency's website at **http://www.nlrb.gov**, click on the **File Case Documents tab, and then follow the detailed instructions.** The responsibility for the receipt and usability of the Answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than two (2) hours after 12:00 noon (Eastern Time) on the due

date for the filing, a failure to timely file the Answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an Answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Sections 102.21. If the Answer being filed electronically is a pdf document containing the required signature, no paper copies of the document need to be transmitted to the Regional Office. However, if the electronic version of the Answer to a Complaint is not a pdf file containing the required signature, then the E-filing rules require that such Answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the Answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The Answer may **not** be filed by facsimile transmission. If no Answer is filed, or if an Answer is untimely filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Consolidated Complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE that at **10:00 a.m. on March 19, 2018,** and on consecutive days thereafter until concluded, a hearing will be conducted before an Administrative Law Judge of the National Labor Relations Board in a hearing room of the National Labor Relations Board, Region Four, 615 Chestnut Street, Suite 710, Philadelphia, Pennsylvania. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this Consolidated Complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Signed at Philadelphia, Pennsylvania on this 29th day of September, 2017.

DENNIS P. WALSH
Regional Director, Fourth Region
National Labor Relations Board

EXHIBIT B

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

WYMAN GORDON PENNSYLVANIA, LLC	:	
	:	
v.	:	CASES 04-CA-182126,
	:	04-CA-186281, and
UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED-INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO/CLC	:	04-CA-188990

RESPONDENT'S ANSWER TO COMPLAINT AND AFFIRMATIVE DEFENSES

COMES NOW, WYMAN GORDON PENNSYLVANIA, LLC ("Wyman Gordon" or "Respondent"), by and through its undersigned counsel and pursuant to Section 102.20 of the Board's Rules and Regulations, timely files its Answer and Affirmative Defenses to the Complaint ("Complaint") issued by the Regional Director in the above-captioned cases on September 29, 2017.[1]

AFFIRMATIVE DEFENSES

FIRST DEFENSE

To the extent that the Complaint encompasses any allegations occurring more than six months prior to the filing of an underlying charge with the National Labor Relations Board ("NLRB" or the "Board") and the service of such charge upon Wyman Gordon, such allegations

[1] Pursuant to the Board's Rules and Regulations, this Answer is filed without waiving, and specifically reserving, Respondent's right to make motions or to make objections to rulings upon motions. NLRB Rules and Regulations, Rule 102.28 ("The right to make motions or to make objections to rulings upon motions shall not be deemed waived by the filing of an answer or by other participation in the proceedings before the administrative law judge.").

are time-barred by Section 10(b) of the National Labor Relations Act, as amended ("NLRA" or the "Act").

SECOND DEFENSE

To the extent that the Complaint fails to give Wyman Gordon fair and adequate notice of the underlying charges, it denies Wyman Gordon its right to due process under the U.S. Constitution, its right to notice of the charges under Section 10 of the NLRA, and its right to notice and a fair hearing under the Board's Rules and Regulations.

THIRD DEFENSE

The Complaint is invalid to the extent that any alleged agents of Wyman Gordon committed acts that are ultimately determined to be outside the scope of their employment, or to the extent that they were never directed, authorized, or permitted thereby.

FOURTH DEFENSE

The Complaint is invalid to the extent it fails to state a claim upon which relief may be granted.

FIFTH DEFENSE

The Complaint is invalid to the extent that the General Counsel has pled legal conclusions rather than required factual allegations.

SIXTH DEFENSE

To the extent that supervisors and agents of Wyman Gordon expressed only their views, arguments, or opinions, containing no threat of reprisal, promise of benefits, or suggestion of surveillance, such statements were protected in their entirety by Section 8(c) of the NLRA.

SEVENTH DEFENSE

The Complaint is invalid to the extent that it contains allegations that were not included within a timely-filed, pending unfair labor practice charge against Wyman Gordon.

EIGHTH DEFENSE

The Complaint is invalid in that it is vague and imprecise with regard to the alleged actions of Wyman Gordon.

ANSWERS TO NUMBERED AND UNNUMBERED PARAGRAPHS

1. (a) Responding to Paragraph 1(a) of the Complaint, Wyman Gordon admits that the UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED-INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO/CLC (the "Union" or "Charging Party") filed the unfair labor practice in Case 04-CA-182126 on August 15, 2016, but Wyman Gordon has no knowledge as to the date on which the Board placed it in the mail.

(b) Responding to Paragraph 1(a) of the Complaint, Wyman Gordon admits that the UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED-INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO/CLC (the "Union" or "Charging Party") filed the unfair labor practice in Case 04-CA-186281 on October 17, 2016, but Wyman Gordon has no knowledge as to the date on which the Board placed it in the mail.

(c) Responding to Paragraph 1(a) of the Complaint, Wyman Gordon admits that the UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED-INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO/CLC (the "Union" or "Charging Party") filed the unfair labor practice in Case 04-CA-188990 on November 30, 2016, but Wyman Gordon has no knowledge as to the date on which the Board placed it in the mail.

2. (a) Responding to Paragraph 2(a) of the Complaint, Wyman Gordon admits only that it has manufactured rotating closed-die forgings for aerospace and land-based gas turbines. The correct address for Wyman Gordon is 1141 Highway 315, Wilkes-Barre, Pennsylvania. The remaining allegations in this Paragraph of the Complaint are denied.

(b) Responding to Paragraph 2(b) of the Complaint, Wyman Gordon admits the allegation contained therein.

(c) Responding to Paragraph 2(c) of the Complaint, Wyman Gordon admits the allegation contained therein.

3. Responding to Paragraph 3 of the Complaint, Wyman Gordon admits the allegation contained therein.

4. (a) Responding to Paragraph 4(a) of the Complaint, Wyman Gordon admits that Tim Brink, Matthew Troutman, Brad Georgetti, and Leah Leikheim have at times held the positions listed opposite their names, but denies that they have held such positions within the meaning of the Act "at all material times," as that term is not defined in the Complaint. The remaining allegations in this paragraph of the Complaint are denied.

(b) Responding to Paragraph 4(b) of the Complaint, Wyman Gordon admits only that Deborah Lukas has held the position of Human Resources Assistant, but denies that she held such position within the meaning of the Act "at all material times," as that term is not defined in the Complaint, and that she was an agent of Wyman Gordon within the meaning of the Act.

(c) Responding to Paragraph 4(c) of the Complaint, Wyman Gordon admits only that Respondent's counsel served on Respondent's negotiating team, but denies that he was the "Chief Negotiator" as that term is not defined in the Complaint. The remaining allegations in this paragraph of the Complaint are denied.

5. (a) Responding to Paragraph 5(a) of the Complaint, Wyman Gordon admits the allegations contained therein.

(b) Responding to Paragraph 5(b) of the Complaint, Wyman Gordon admits the allegations contained therein.

(c) Responding to Paragraph 5(c) of the Complaint, Wyman Gordon admits only that no other Union served as the collective-bargaining representative of the Unit since April 14, 2015, but denies that the Union has been the collective-bargaining representative of the Unit since November 29, 2016.

6. (a) Responding to Paragraph 6(a) of the Complaint, Wyman Gordon admits only that it has maintained an employee handbook at times, but denies that it has maintained the employee handbook "at all material times" as that term is not defined in the Complaint.

(b) Responding to Paragraph 6(b) of the Complaint, Wyman Gordon admits only that it maintains a Confidentiality Statement, but denies that it is set forth in its entirety in the Complaint. By way of further answer, the allegations in this paragraph of the Complaint refer to a writing that speaks for itself, and any attempt to paraphrase or mischaracterize its terms is improper and, therefore, any such allegations are expressly denied.

(c) Responding to Paragraph 6(c) of the Complaint, Wyman Gordon admits only that it maintains an Electronic Communications policy, but denies that it is set forth in its entirety in the Complaint. By way of further answer, the allegations in this paragraph of the Complaint refer to a writing that speaks for itself, and any attempt to paraphrase or mischaracterize its terms is improper and, therefore, any such allegations are expressly denied.

(d) Responding to Paragraph 6(d) of the Complaint, Wyman Gordon admits only

that it maintains a Media Contact policy, but denies that it is set forth in its entirety in the Complaint. By way of further answer, the allegations in this paragraph of the Complaint refer to a writing that speaks for itself, and any attempt to paraphrase or mischaracterize its terms is improper and, therefore, any such allegations are expressly denied.

7. (a) Responding to Paragraph 7(a) of the Complaint, Wyman Gordon admits the allegations contained therein.

(b) Responding to Paragraph 7(b) of the Complaint, Wyman Gordon denies the allegations contained therein.

8. Responding to Paragraph 8 of the Complaint, Wyman Gordon denies the allegations contained therein. By way of further answer, Wyman Gordon states that it in good faith attempted to bargain with the Union over the discretionary amount of the annual wage increases for Unit employees, and it was the Union who failed to bargain in good faith and failed to respond to Wyman Gordon's proposals. Moreover, the Union withdrew the portion of Charge No. 04-CA-182126 alleging that the Employer violated the Act by not distributing annual wage increases on August 1, 2016 and, therefore, allegations relating thereto are not properly included in this Complaint.

9. (a) Responding to Paragraph 9(a) of the Complaint, Wyman Gordon denies the allegations contained therein. By way of further answer, the Union withdrew the portion of Charge No. 04-CA-186281 alleging that Wyman Gordon discriminatorily made changes to the light duty program.

(b) Responding to Paragraph 9(b) of the Complaint, Wyman Gordon denies the

allegations contained therein. By way of further answer, the Union withdrew the portion of Charge No. 04-CA-186281 alleging that Wyman Gordon discriminatorily made changes to the light duty program.

(c) Responding to Paragraph 9(c) of the Complaint, Wyman Gordon denies the allegations contained therein. By way of further answer, the Union withdrew the portion of Charge No. 04-CA-186281 alleging that Wyman Gordon discriminatorily made changes to the light duty program.

10. (a) Responding to Paragraph 10(a) of the Complaint, Wyman Gordon admits only that the Union sent a letter dated August 12, 2016. By way of further answer, the allegations in this paragraph of the Complaint refer to a writing that speaks for itself, and any attempt to paraphrase or mischaracterize its terms is improper and, therefore, any such allegations are expressly denied.

(b) Responding to Paragraph 10(b) of the Complaint, Wyman Gordon denies the allegations contained therein. By way of further answer, it is undisputed that Wyman Gordon in good faith attempted to bargain with the Union over the discretionary amount of the annual wage increases for Unit employees, and it was the Union who failed to bargain in good faith and failed to respond to Wyman Gordon's proposals relating to the interim wage increase.

(c) Responding to Paragraph 10(c) of the Complaint, Wyman Gordon denies the allegations contained therein. Moreover, the allegations in this paragraph of the Complaint were not included with specificity in any ULP filed by the Union and, therefore, are not properly included in this Complaint.

(d) Responding to Paragraph 10(d) of the Complaint, Wyman Gordon denies the allegations contained therein. Moreover, the allegations in this paragraph of the Complaint were

not included with specificity in any ULP filed by the Union and, therefore, are not properly included in this Complaint.

(e) Responding to Paragraph 10(e) of the Complaint, Wyman Gordon admits only that the Union sent a letter dated August 31, 2016. By way of further answer, the allegations in this paragraph of the Complaint refer to a writing that speaks for itself, and any attempt to paraphrase or mischaracterize its terms is improper and, therefore, any such allegations are expressly denied.

(f) Responding to Paragraph 10(f) of the Complaint, Wyman Gordon denies the allegations contained therein.

11. (a) Responding to Paragraph 11(a) of the Complaint, Wyman Gordon admits only that the Union sent a letter to Respondent's attorney on or about August 12, 2016. By way of further answer, the allegations in this paragraph of the Complaint refer to a writing that speaks for itself, and any attempt to paraphrase or mischaracterize its terms is improper and, therefore, any such allegations are expressly denied.

(b) Responding to Paragraph 11(b) of the Complaint, Wyman Gordon admits only that the Union sent letters to Respondent's attorney on or about August 31, 2016, September 21, 2016, and October 17, 2016. By way of further answer, the allegations in this paragraph of the Complaint refer to a writing that speaks for itself, and any attempt to paraphrase or mischaracterize its terms is improper and, therefore, any such allegations are expressly denied.

(c) Responding to Paragraph 11(c) of the Complaint, Wyman Gordon denies the allegations contained therein. Moreover, much of the information identified in Paragraph 11(a) of the Complaint was provided to the Union, to the extent it existed, in a timely manner.

(d) Responding to Paragraph 11(d) of the Complaint, Wyman Gordon denies the

allegations contained therein. Moreover, as the Complaint acknowledges, the information identified in Paragraph 11(a)(i) of the Complaint was provided to the Union.

(e) Responding to Paragraph 11(e) of the Complaint, Wyman Gordon denies the allegations contained therein. Moreover, much of the information identified in Paragraph 11(a) of the Complaint was provided to the Union, to the extent it existed, in a timely manner.

12. (a) Responding to Paragraph 12(a) of the Complaint, Wyman Gordon admits only that the Union sent a letter to Respondent's attorney on or about August 31, 2016. By way of further answer, the allegations in this paragraph of the Complaint refer to a writing that speaks for itself, and any attempt to paraphrase or mischaracterize its terms is improper and, therefore, any such allegations are expressly denied.

(b) Responding to Paragraph 12(b) of the Complaint, Wyman Gordon admits only that the Union sent letters to Respondent's attorney on or about September 6, 2016, September 21, 2016, and October 17, 2016. By way of further answer, the allegations in this paragraph of the Complaint refer to writings that speak for themselves, and any attempt to paraphrase or mischaracterize their terms is improper and, therefore, any such allegations are expressly denied.

(c) Responding to Paragraph 12(c) of the Complaint, Wyman Gordon denies the allegations contained therein. Moreover, the Region found that the Union already had accepted the Employer's health insurance premium increase on June 13, 2016, months before it asked for any additional information relating to health insurance premiums.

(d) Responding to Paragraph 12(d) of the Complaint, Wyman Gordon denies the information contained therein. By way of further answer, Wyman Gordon provided the appropriate health insurance related information to the Union.

13. (a) Responding to Paragraph 13(a) of the Complaint, Wyman Gordon admits only that the Union sent a letter to Respondent's attorney on or about September 6, 2016. By way of further answer, the allegations in this paragraph of the Complaint refer to a writing that speaks for itself, and any attempt to paraphrase or mischaracterize its terms is improper and, therefore, any such allegations are expressly denied.

(b) Responding to Paragraph 13(b) of the Complaint, Wyman Gordon admits only that the Union sent letters to Respondent's attorney on or about September 21, 2016 and October 17, 2016. By way of further answer, the allegations in this paragraph of the Complaint refer to a writing that speaks for itself, and any attempt to paraphrase or mischaracterize its terms is improper and, therefore, any such allegations are expressly denied.

(c) Responding to Paragraph 13(c) of the Complaint, Wyman Gordon denies the allegations contained therein. By way of further answer, the Union was not entitled to the information identified in Paragraph 13(a) of the Complaint, nor was such information necessary for or relevant to the Union's ability to bargain.

(e)[2] Responding to Paragraph 13(e) of the Complaint, Wyman Gordon denies the allegations contained therein. By way of further answer, the Union was not entitled to the information identified in Paragraph 13(a) of the Complaint, nor was such information necessary for or relevant to the Union's ability to bargain.

(f) Responding to Paragraph 13(f) of the Complaint, Wyman Gordon denies the allegations contained therein. By way of further answer, the Union was not entitled to the information identified in Paragraph 13(a) of the Complaint, nor was such information necessary for or relevant to the Union's ability to bargain.

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[2] The Complaint inadvertently omits subparagraph (d), and, therefore, it is omitted from the Answer as well.

14. (a) Responding to Paragraph 14(a) of the Compliant, Wyman Gordon admits the allegations contained therein.

(b) Responding to Paragraph 14(b) of the Complaint, Wyman Gordon admits only that it withdrew recognition of the Union as the exclusive collective-bargaining representative of the Unit per the demand of the attorneys at the National Right to Work Foundation who provided the petition sheets signed by a majority of Unit employees demonstrating that the Union no longer had majority support among the employees. Wyman Gordon denies the cursory allegation that they engaged in the conduct described in paragraphs 6 through 13 and incorporates its responses to those paragraphs as though fully set forth at length herein.

(c) Responding to Paragraph 14(c) of the Complaint, Wyman Gordon admits only that it withdrew recognition of the Union as the exclusive collective-bargaining representative of the Unit the demand of the attorneys at the National Right to Work Foundation who provided per the petition sheets signed by a majority of Unit employees demonstrating that the Union no longer had majority support among the employees.

15. Responding to Paragraph 15 of the Complaint, Wyman Gordon denies the allegations contained therein.

16. Responding to Paragraph 16 of the Complaint, Wyman Gordon denies the allegations contained therein. By way of further answer, Wyman Gordon states that the Regional Director already has found that Wyman Gordon did not engage in unlawful bad faith bargaining in violation of Section 8(a)(5) of the Act, and the General Counsel upheld that finding.

17. Responding to Paragraph 17 of the Complaint, Wyman Gordon denies the allegations contained therein.

WHEREFORE, having fully answered the Complaint, Wyman Gordon prays that it be dismissed in its entirety, or, in the alternative, that Counsel for the General Counsel be held to strict proof as to all allegations not specifically admitted.

Respectfully submitted this 13th day of October, 2017.

Respectfully submitted,

Rick Grimaldi, Esq.
Lori Armstrong Halber, Esq.
Christina M. Michael, Esq.
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ATTORNEYS FOR RESPONDENT WYMAN GORDON PENNSYLVANIA, LLC

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

WYMAN GORDON PENNSYLVANIA, LLC	:	
	:	
v.	:	CASES 04-CA-182126,
	:	04-CA-186281, and
UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED-INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO/CLC	:	04-CA-188990

CERTIFICATE OF SERVICE

Pursuant to Section 102.114 of the *Board's Rules and Regulations*, I hereby certify that on the13th day of October, 2017, I e-filed *Respondent's Answer to Complaint and Affirmative Defenses* with the NATIONAL LABOR RELATIONS BOARD, and served a copy of the foregoing document via e-mail and U.S. Mail to all parties in interest, as listed below:

Mr. Dennis P. Walsh
Regional Director
NLRB – Region 4
615 Chestnut Street
7th Floor
Philadelphia, PA 19106-4404

Nathan Kilbert, Esquire
United Steelworkers of America
60 Boulevard of the Allies
Five Gateway Center
Pittsburgh, PA 15222

Lori Armstrong Halber

EXHIBIT C

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 04
615 Chestnut Street, Suite 710
Philadelphia, PA 19106-4413

Agency Website: www.nlrb.gov
Telephone: (215) 597-7601
Fax: (215) 597-7658

March 1, 2017

Mr. Nathan Kilbert
United Steel, Paper and Forestry, Rubber,
Manufacturing, Energy, Allied-Industrial and Service
Workers International Union, AFL-CIO/CLC
60 Boulevard of the Allies
Five Gateway Center, Room 807
Pittsburgh, PA 15222

Re: Wyman Gordon Tru-Form
Case 04-CA-188990

Dear Mr. Kilbert:

We have carefully investigated and considered your charge that Wyman Gordon Tru-Form has violated the National Labor Relations Act.

Decision to Partially Dismiss: Based on the investigation, I have decided to dismiss the portions of the charge alleging that the Employer violated Section 8(a)(1) and (5) of the Act by making unilateral changes to the employee health care premiums in June 2016, paying Quarterly Cash Bonuses to employees on August 15 and October 26, 2016 without bargaining over discretionary components of the bonuses, and failing to bargain in overall good faith with United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union (the Union). I am also dismissing the portion of the charge alleging that the Employer violated Section 8(a)(1) and (3) of the Act by singling out two employees for discipline in retaliation for their Union activities.

Regarding the alleged unilateral changes to health insurance premiums, the investigation revealed that on May 16 and 26, 2016, the Employer and Union bargained over changes to the premiums, although no agreement was reached. On June 3, 2016, the Employer announced the amount of the premium changes to the employees, and informed employees and the Union that those changes were subject to continued bargaining with the Union and could change depending on the outcome of bargaining. On June 13, 2016, the Employer offered to continue bargaining with the Union over the healthcare premiums. It is undisputed that the Union chose not to bargain further on this issue and indicated on June 13 and times thereafter that it accepted the Employer's health insurance premium increase.

Regarding the alleged failure to bargain concerning the discretionary components of the Quarterly Cash Bonuses (QCBs) before awarding QCBs to unit employees, the investigation established that the Employer has an established formula which it uses to calculate the amount of the bonuses and there is insufficient discretion in the formula itself to require bargaining with the Union.

Regarding the allegation that the Employer failed to bargain in overall good faith, the Union contended during the investigation that the Employer's bad faith was evidenced by its cancellation of eight bargaining sessions, obstruction in scheduling bargaining sessions, excessive caucuses, and "unreasonable" and/or regressive bargaining proposals with respect to the Union Security, Plant Rules, Job Posting and Bidding, Management Rights, Layoffs, and Seniority provisions. The investigation disclosed that throughout bargaining, the Employer adhered to the parties' bargaining ground rules by scheduling bargaining sessions in advance and providing at least 24-hours' notice of any cancellations. Moreover, five of the eight bargaining cancelled sessions were rescheduled within a week of the originally scheduled date. While the Union asserted that the Employer was aware of the Union's Lead Negotiator Joe Pozza's busy schedule and asserted that every cancelled session ran the risk of becoming a lost session, it is well settled that a party acts at its peril when it chooses as a bargaining agent someone who is encumbered by other conflicts which limit his availability. *Nursing Center at Vineland*, 318 NLRB 901, 905 (1995); *Caribe Staple Co.*, 313 NLRB 877, 893 (1994); and cases cited therein.

With respect to caucusing, the parties had agreed in their bargaining ground rules that "each party has the right to caucus at any time..." and, although the ground rules also indicated that "the requesting party will inform the other party of the anticipated length of the caucus," the evidence revealed that the parties did not always adhere to this portion of the ground rules by informing each other of how long each caucus should last. Thus, though the Union felt that certain of the Employer's caucuses lasted longer than the Union felt necessary, there is insufficient evidence that the Employer was engaging in bad faith bargaining as a result of its caucuses.

The evidence established that with regard to the Union's contention that the Employer made "unreasonable" or regressive proposals, the Employer made several concessions on Union Security, shortening the period of days of employment required before an employee must pay union dues, and it clarified its position and proposals on Plant Rules when the Union informed it of inconsistent language in its proposals. With regard to negotiations regarding Job Posting and Bidding, the parties never reached a tentative agreement on this provision, and while the Employer did propose different language in its fourth proposal on this subject than it did in prior proposals, that alone does not establish regressive bargaining. With regard to bargaining over the Seniority and Layoffs provisions, there is no legal requirement that an an employer has to agree to seniority as a deciding factor for layoffs, job bidding, or any other term, and the Employer was simply seeking to include other factors in addition to seniority. Finally, with regard to the Employer's Management Rights proposal, the proposal was not atypical or unlawful and notably did not limit any other rights the Union may have obtained under the CBA; the Union also could have provided a counter offer in an attempt to modify any language to

which it did not agree. As such, I find the Employer engaged in hard, not regressive, bargaining and did not engage in unlawful bad faith bargaining in violation of Section 8(a)(5) of the Act.

With respect to the allegation that the Employer issued unlawful discipline to employees Chad Palmer and Gerald Ziminskas on October 18, 2016, the investigation revealed insufficient evidence to establish that the union activity of either employee was a motivating factor in the issuance of their discipline. While Ziminskas served as a Local Unit official and attended bargaining sessions with the Union, and the Employer was aware of those activities, there is insufficient evidence to find that Palmer engaged in recent union activity since 2014 or that the Employer knew of any such activity. Even assuming, *arguendo*, that these employees' union activity was a factor, the Employer met its burden to show that it would have taken the same action even absent any union activity as there was no evidence that they were treated differently from others for the same infraction. *Wright Line, Inc.*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981).

Thus, the Employer did not violate Section 8(a)(1), (3) or (5) of the Act with respect to the above allegations. Accordingly, I am refusing to issue Complaint on these portions of the charge. All other portions of the charge remain pending.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals. If you appeal, you may use the enclosed Appeal Form, which is also available at www.nlrb.gov. However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax or email. To file an appeal electronically, go to the Agency's website at www.nlrb.gov, click on **E-File Documents,** enter the **NLRB Case Number**, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the **General Counsel** at the **National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

Appeal Due Date: The appeal is due on **Wednesday, March 15. 2017.** If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than **Tuesday, March 14, 2017. If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely**. If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so, and the request for an extension of time is **received on or before Wednesday, March 15, 2017.** The request may be filed electronically through the ***E-File Documents*** link on our website www.nlrb.gov, by fax to (202) 273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after **Wednesday, March 15, 2017, even if it is postmarked or given to the delivery service before the due date.** Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

DENNIS P. WALSH
Regional Director

Enclosure

cc: Brad Georgetti
Wyman Gordon Tru-Form
1141 Highway 315 Boulevard
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Lori Armstrong Halber, Esquire
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